

REMARKS

Initially, Applicant would like to express appreciation to the Examiner for the detailed Official Action provided.

Applicant submits that the instant amendment is proper for entry after final rejection. Applicant submits claim 1 has been amended to incorporate limitations from dependent claim 11, and claims 3, 5, 6 and 7 have been amended merely for clarification. Thus, Applicant submits that no question of new matter nor are any new issues raised in entering the instant amendment of the claims and that no new search is required.

Moreover, Applicant submits that the instant amendment places the application in condition for allowance, or at least in better form for appeal.

Accordingly, Applicant requests that the Examiner enter the instant amendment, consider the merits of the same, and indicate the allowability of the present application and each of the pending claims.

Upon entry of the present amendment, claims 1, 3, 5, 6, 7 and 11 will have been amended. Claims 1, 3, 5-8 and 11 are currently pending. In view of the herein-contained amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of each of the outstanding rejections in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

In the Official Action, the Examiner rejected claims 1, 3, 5, 8 and 11 under 35 U.S.C. § 103(a) as being unpatentable over WOLTER (US Published Patent Application No. 2003/0129559) in view of VALENTINO (US Patent No. 5,673,802) and CARPENTER (US Patent No. 6,554,448); and

the Examiner rejected claims 6 and 7 under 35 U.S.C. § 103(a) as being

unpatentable over WOLTER in view of VALENTINO and CARPENTER, and further in view of ZER (U.S. Patent No. 5,860,725).

Without acquiescing to the propriety of the Examiner's rejections, claim 1 has been amended solely in order to more clearly recite the presently claimed invention and to expedite prosecution of the present application.

In this regard, Applicant submits that none of the applied prior art, alone or in any properly reasoned combination, discloses the combination of features recited in amended claim 1.

In particular, claim 1 recites a cake decorating device including, inter alia, a horizontally extending base having a rectangular shape and a support pin at a lower surface thereof to be pinned at a predetermined position on a cake and at least one aperture on an upper surface of the base configured to receive at least one projection, the pin configured to extend into the cake, the base having a generally planar, vertical wall extending from an end of the base, wherein the base is substantially smaller than the cake to which the base is configured to be mounted.

Applicant submits that none of the applied prior art, alone or in any properly reasoned combination, discloses at least the above-noted combination of features.

In setting forth the rejection, the Examiner asserts that WOLTER, VALENTINO and CARPENTER disclose substantially all of the claim limitations (see, page 6, paragraph 7, of the Official Action). However, the Examiner acknowledges that the applied prior art does not disclose the presently claimed shape or relative size of the base of the cake decorating device. Nevertheless, the Examiner takes the position that the shape and size of the presently claimed base is merely an obvious design choice

which depends on spatial considerations.

In this regard, Applicant submits that the Examiner has provided no factual basis or proper reasoning to support the assertion that providing the presently claimed base with a rectangular shape, and the base being substantially smaller than the cake to which the base is configured to be mounted, is an obvious design choice.

Thus, Applicant submits that the only reason to supply the acknowledged deficiencies of the applied prior art, as suggested by the Examiner, results from a review of Applicant's disclosure and the application of impermissible hindsight.

Further, in regard to the rejection of claim 11, an additional feature of the presently claimed invention (as recited in this dependent claim) sets forth a cake decorating device including, inter alia, a generally linear array of candles extending along a major dimension of the base.

In setting forth the rejection of claim 11, the Examiner does not explain where or how in the applied prior art the aforementioned feature is disclosed. This is, Applicant submits that the Examiner has not identified where or how the applied prior art discloses a generally linear array of candles which extend along a major dimension of the base.

Accordingly, Applicant respectfully requests that the Examiner clearly explain and indicate how or where the applied prior art discloses a generally linear array of candles which extends along a major dimension of the base (as generally recited in dependent claim 11) in the next Official Action, i.e., should the Examiner decide to maintain the above-noted basis for rejection.

Additionally, Applicant submits that at least one advantage of the presently claimed invention is that a cake decorating device which is easily placed on a cake and

capable of producing a more celebratory atmosphere is achieved (see, page 5, lines 3-9 of the present Specification).

Accordingly, the rejection of claims 1, 3, 5-8 and 11 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Further, Applicant also expressly incorporates all other arguments made in Applicant's previous Responses.

In view of the amendments and remarks herein, Applicant submits that independent claim 1 is in condition for allowance. With regard to dependent claims 3, 5-8 and 11, Applicant asserts that these claims are allowable on their own merit, as well as because of their respective dependencies from independent claim 1, which Applicant has shown to be allowable.

Thus, it is respectfully submitted that all pending claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY

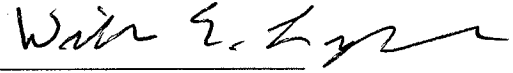
Applicant submits that the present application is in condition for allowance, and respectfully requests an indication to that effect. Applicant has argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicant submits the status of the present application as being after final rejection and with respect to such status believes that there is a clear basis for the entry of the present amendment consistent with 37 C.F.R. § 1.116. Applicant notes amendments after final are not entered as a matter of right; however, Applicant submits that the present amendment does not raise the question of new matter. Moreover, the present amendment clearly places the present application in condition for allowance.

Applicant submits that this amendment is being made to advance prosecution of the application to allowance and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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January 2, 2008
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